

AMENDED IN ASSEMBLY APRIL 22, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1121**

---

**Introduced by Assembly Member Atkins**  
**(Coauthors: Assembly Members Garcia and Stone)**

February 22, 2013

---

An act to amend Sections 1277 and 1278 of the Code of Civil Procedure, and to add Section 103426 to, the Health and Safety Code, relating to ~~civil proceedings~~ *gender identity*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1121, as amended, Atkins. ~~Civil proceedings: Gender identity:~~ petition for change of name.

Existing law sets forth the requirements and procedures for proceedings commenced by the filing of a petition for a change of name. Existing law authorizes a court to grant the petition without a hearing if no written objection to the change of name is timely filed and imposes publication requirements with respect to the court hearing of the change of name petition. Existing law also requires that the current legal name of the petitioner be kept confidential by the court under prescribed circumstances.

This bill would provide that if no written objection is timely filed, the order reciting the filing of the petition, the petitioner's name, and the proposed name shall state that the court is required to grant the petition without a hearing. ~~The bill would repeal the publication requirements relating to the order to show cause and would repeal and recast the provisions specifying the conditions under which the current legal name of the petitions be kept confidential by the court, including a situation where the petition for a change of name is sought in order~~

~~to conform the petitioner's name to his or her gender identity. The bill would make conforming changes. If a petition for a change of name is sought in order to conform the petitioner's name to his or her gender identity, the bill would exempt the action from a specified publication requirement and would require that the petition and order of the court indicate that the proposed name is confidential.~~

Existing law authorizes a person to file a petition with the superior court in any county to seek a judgment recognizing a change of gender whenever that person has undergone clinically appropriate treatment for the purpose of gender transition. Existing law requires that if requested, the judgment include an order that a new birth certificate be prepared to reflect the change of gender and any change of name. Existing law requires that the State Registrar transmit a certified copy of a birth certificate newly established pursuant to these provisions.

This bill would require the State Registrar to issue a new birth certificate without a court order for any person born in the state who has undergone clinically appropriate treatment for the purpose of gender transition and submits to the State Registrar an affidavit of a physician attesting that the person has undergone that treatment, as specified. Upon receipt of the documentation and a prescribed fee, the State Registrar would be required to establish a new birth certificate reflecting the person's sex and name, if applicable.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 1277 of the Code of Civil Procedure is~~  
2     ~~amended to read:~~  
3     ~~1277. (a) If a proceeding for a change of name is commenced~~  
4     ~~by the filing of a petition, except as provided in subdivisions (b);~~  
5     ~~(c), and (e), the court shall thereupon make an order reciting the~~  
6     ~~filing of the petition, the name of the person by whom it is filed,~~  
7     ~~and the name proposed. The order shall direct all persons interested~~  
8     ~~in the matter to appear before the court at a time and place~~  
9     ~~specified, which shall be not less than six nor more than 12 weeks~~  
10    ~~from the time of making the order, unless the court orders a~~  
11    ~~different time, to show cause why the application for change of~~  
12    ~~name should not be granted. The order shall direct all persons~~  
13    ~~interested in the matter to make known any objection that they~~

1 may have to the granting of the petition for change of name by  
2 filing a written objection, which includes the reasons for the  
3 objection, with the court at least two court days before the matter  
4 is scheduled to be heard and by appearing in court at the hearing  
5 to show cause why the petition for change of name should not be  
6 granted. The order shall state that, if no written objection is timely  
7 filed, the court shall grant the petition without a hearing.

8 If a petition has been filed for a minor by a parent and the other  
9 parent, if living, does not join in consenting thereto, the petitioner  
10 shall cause, not less than 30 days prior to the hearing, to be served  
11 notice of the time and place of the hearing or a copy of the order  
12 to show cause on the other parent pursuant to Section 413.10,  
13 414.10, 415.10, or 415.40. If notice of the hearing cannot  
14 reasonably be accomplished pursuant to Section 415.10 or 415.40,  
15 the court may order that notice be given in a manner that the court  
16 determines is reasonably calculated to give actual notice to the  
17 nonconsenting parent. In that case, if the court determines that  
18 notice by publication is reasonably calculated to give actual notice  
19 to the nonconsenting parent, the court may determine that  
20 publication of the order to show cause pursuant to this subdivision  
21 is sufficient notice to the nonconsenting parent.

22 (b) Upon the petitioner's request, in situations where a person's  
23 safety or privacy is at risk, the current legal name of the petitioner  
24 shall be kept confidential by the court and shall not be published  
25 or posted in the court's calendars, indexes, or register of actions,  
26 as required by Article 7 (commencing with Section 69840) of  
27 Chapter 5 of Title 8 of the Government Code, or by any means or  
28 in any public forum, including a hardcopy or an electronic copy,  
29 or any other type of public media or display, if any of the following  
30 conditions is met:

31 (1) Confidentiality is necessary to avoid domestic violence, as  
32 defined in Section 6211 of the Family Code.

33 (2) Confidentiality is necessary to avoid stalking, as defined in  
34 Section 646.9 of the Penal Code.

35 (3) The petitioner is, or filing on behalf of, a victim of sexual  
36 assault, as defined in Section 1036.2 of the Evidence Code.

37 (4) The petition for a change of name is sought in order to  
38 conform the petitioner's name to his or her gender identity.

39 (c) (1) A petitioner may request that the court file the petition  
40 and any other papers associated with the proceeding under seal.

1 The court may consider the request at the same time as the petition  
2 for name change, and may grant the request in any case in which  
3 the court finds that all of the following factors apply:

4 (A) There exists an overriding interest that overcomes the right  
5 of public access to the record.

6 (B) The overriding interest supports sealing the record.

7 (C) A substantial probability exists that the overriding interest  
8 will be prejudiced if the record is not sealed.

9 (D) The proposed order to seal the records is narrowly tailored.

10 (E) No less restrictive means exist to achieve the overriding  
11 interest.

12 (2) On or before January 1, 2010, the Judicial Council shall  
13 develop rules of court and forms consistent with the requirements  
14 of this paragraph.

15 (d) If application for change of name is brought as part of an  
16 action under the Uniform Parentage Act (Part 3 (commencing with  
17 Section 7600) of Division 12 of the Family Code), whether as part  
18 of a petition or cross-complaint or as a separate order to show  
19 cause in a pending action thereunder, service of the application  
20 shall be made upon all other parties to the action in a like manner  
21 as prescribed for the service of a summons, as is set forth in Article  
22 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of  
23 Part 2. Upon the setting of a hearing on the issue, notice of the  
24 hearing shall be given to all parties in the action in a like manner  
25 and within the time limits prescribed generally for the type of  
26 hearing (whether trial or order to show cause) at which the issue  
27 of the change of name is to be decided.

28 (e) If a guardian files a petition to change the name of his or her  
29 minor ward pursuant to Section 1276:

30 (1) The guardian shall provide notice of the hearing to any living  
31 parent of the minor by personal service at least 30 days prior to  
32 the hearing.

33 (2) If either or both parents are deceased or cannot be located,  
34 the guardian shall cause, not less than 30 days prior to the hearing,  
35 to be served a notice of the time and place of the hearing or a copy  
36 of the order to show cause on the child's grandparents, if living,  
37 pursuant to Section 413.10, 414.10, 415.10, or 415.40.

38 *SECTION 1. Section 1277 of the Code of Civil Procedure is*  
39 *amended to read:*

1 1277. (a) If a proceeding for a change of name is commenced  
2 by the filing of a petition, except as provided in subdivisions (b),  
3 (c), and (e), the court shall thereupon make an order reciting the  
4 filing of the petition, the name of the person by whom it is filed,  
5 and the name proposed. The order shall direct all persons interested  
6 in the matter to appear before the court at a time and place  
7 specified, which shall be not less than six nor more than 12 weeks  
8 from the time of making the order, unless the court orders a  
9 different time, to show cause why the application for change of  
10 name should not be granted. The order shall direct all persons  
11 interested in the matter to make known any objection that they  
12 may have to the granting of the petition for change of name by  
13 filing a written objection, which includes the reasons for the  
14 objection, with the court at least two court days before the matter  
15 is scheduled to be heard and by appearing in court at the hearing  
16 to show cause why the petition for change of name should not be  
17 granted. The order shall state that, if no written objection is timely  
18 filed, the court ~~may~~ *shall* grant the petition without a hearing.

19 A copy of the order to show cause shall be published pursuant  
20 to Section 6064 of the Government Code in a newspaper of general  
21 circulation to be designated in the order published in the county.  
22 If no newspaper of general circulation is published in the county,  
23 a copy of the order to show cause shall be posted by the clerk of  
24 the court in three of the most public places in the county in which  
25 the court is located, for a like period. Proof shall be made to the  
26 satisfaction of the court of this publication or posting, at the time  
27 of the hearing of the application.

28 Four weekly publications shall be sufficient publication of the  
29 order to show cause. If the order is published in a daily newspaper,  
30 publication once a week for four successive weeks shall be  
31 sufficient.

32 If a petition has been filed for a minor by a parent and the other  
33 parent, if living, does not join in consenting thereto, the petitioner  
34 shall cause, not less than 30 days prior to the hearing, to be served  
35 notice of the time and place of the hearing or a copy of the order  
36 to show cause on the other parent pursuant to Section 413.10,  
37 414.10, 415.10, or 415.40. If notice of the hearing cannot  
38 reasonably be accomplished pursuant to Section 415.10 or 415.40,  
39 the court may order that notice be given in a manner that the court  
40 determines is reasonably calculated to give actual notice to the

1 nonconsenting parent. In that case, if the court determines that  
2 notice by publication is reasonably calculated to give actual notice  
3 to the nonconsenting parent, the court may determine that  
4 publication of the order to show cause pursuant to this subdivision  
5 is sufficient notice to the nonconsenting parent.

6 (b) (1) If the petition for a change of name alleges a reason or  
7 circumstance described in paragraph (2), and the petitioner is a  
8 participant in the address confidentiality program created pursuant  
9 to Chapter 3.1 (commencing with Section 6205) of Division 7 of  
10 Title 1 of the Government Code, the action for a change of name  
11 is exempt from the requirement for publication of the order to  
12 show cause under subdivision (a), and the petition and the order  
13 of the court shall, in lieu of reciting the proposed name, indicate  
14 that the proposed name is confidential and will be on file with the  
15 Secretary of State pursuant to the provisions of the address  
16 confidentiality program.

17 (2) The procedure described in paragraph (1) applies to petitions  
18 alleging any of the following reasons or circumstances:

19 (A) To avoid domestic violence, as defined in Section 6211 of  
20 the Family Code.

21 (B) To avoid stalking, as defined in Section 646.9 of the Penal  
22 Code.

23 (C) The petitioner is, or is filing on behalf of, a victim of sexual  
24 assault, as defined in Section 1036.2 of the Evidence Code.

25 *(3) If the petition for a change of name is sought in order to*  
26 *conform the petitioner's name to his or her gender identity, the*  
27 *action for a change of name is exempt from the requirement for*  
28 *publication of the order to show cause under subdivision (a), and*  
29 *the petition and order of the court shall, in lieu of reciting the*  
30 *proposed name, indicate that the proposed name is confidential.*

31 ~~(3)~~

32 (4) For any petition under this subdivision, the current legal  
33 name of the petitioner shall be kept confidential by the court and  
34 shall not be published or posted in the court's calendars, indexes,  
35 or register of actions, as required by Article 7 (commencing with  
36 Section 69840) of Chapter 5 of Title 8 of the Government Code,  
37 or by any means or in any public forum, including a hardcopy or  
38 an electronic copy, or any other type of public media or display.

39 ~~(4)(A)~~

1 (5) A petitioner may request that the court file the petition and  
2 any other papers associated with the proceeding under seal. The  
3 court may consider the request at the same time as the petition for  
4 name change, and may grant the request in any case in which the  
5 court finds that all of the following factors apply:

6 (i)

7 (A) There exists an overriding interest that overcomes the right  
8 of public access to the record.

9 (ii)

10 (B) The overriding interest supports sealing the record.

11 (iii)

12 (C) A substantial probability exists that the overriding interest  
13 will be prejudiced if the record is not sealed.

14 (iv)

15 (D) The proposed order to seal the records is narrowly tailored.

16 (v)

17 (E) No less restrictive means exist to achieve the overriding  
18 interest.

19 ~~(B) On or before January 1, 2010, the Judicial Council shall~~  
20 ~~develop rules of court and forms consistent with the requirements~~  
21 ~~of this paragraph.~~

22 (c) A proceeding for a change of name for a witness participating  
23 in the state Witness Protection Program established by Title 7.5  
24 (commencing with Section 14020) of Part 4 of the Penal Code  
25 who has been approved for the change of name by the program is  
26 exempt from the requirement for publication of the order to show  
27 cause under subdivision (a).

28 (d) If application for change of name is brought as part of an  
29 action under the Uniform Parentage Act (Part 3 (commencing with  
30 Section 7600) of Division 12 of the Family Code), whether as part  
31 of a petition or cross-complaint or as a separate order to show  
32 cause in a pending action thereunder, service of the application  
33 shall be made upon all other parties to the action in a like manner  
34 as prescribed for the service of a summons, as is set forth in Article  
35 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of  
36 Part 2. Upon the setting of a hearing on the issue, notice of the  
37 hearing shall be given to all parties in the action in a like manner  
38 and within the time limits prescribed generally for the type of  
39 hearing (whether trial or order to show cause) at which the issue  
40 of the change of name is to be decided.

1 (e) If a guardian files a petition to change the name of his or her  
2 minor ward pursuant to Section 1276:

3 (1) The guardian shall provide notice of the hearing to any living  
4 parent of the minor by personal service at least 30 days prior to  
5 the hearing.

6 (2) If either or both parents are deceased or cannot be located,  
7 the guardian shall cause, not less than 30 days prior to the hearing,  
8 to be served a notice of the time and place of the hearing or a copy  
9 of the order to show cause on the child's grandparents, if living,  
10 pursuant to Section 413.10, 414.10, 415.10, or 415.40.

11 SEC. 2. Section 1278 of the Code of Civil Procedure is  
12 amended to read:

13 1278. (a) Except as provided in subdivisions (c) and (d), the  
14 petition or application shall be heard at the time designated by the  
15 court, only if objections are filed by ~~any~~ a person who can, in those  
16 objections, show to the court good reason against the change of  
17 name. At the hearing, the court may examine on oath any of the  
18 petitioners, remonstrants, or other persons, touching the petition  
19 or application, and may make an order changing the name, or  
20 dismissing the petition or application, as to the court may seem  
21 right and proper.

22 If no objection is filed at least two court days before the date set  
23 for hearing, the court shall, without hearing, enter the order that  
24 the change of name is granted.

25 (b) If the provisions of subdivision (b) of Section 1277 apply,  
26 the court shall not disclose the proposed name unless the court  
27 finds by clear and convincing evidence that the allegations of  
28 domestic violence, stalking, sexual assault, or gender identity in  
29 the petition are false.

30 (c) If the application for a change of name is brought as part of  
31 an action under the Uniform Parentage Act (Part 3 (commencing  
32 with Section 7600) of Division 12 of the Family Code), the hearing  
33 on the issue of the change of name shall be conducted pursuant to  
34 statutes and rules of court governing those proceedings, whether  
35 the hearing is conducted upon an order to show cause or upon trial.

36 (d) If the petition for a change of name is filed by a guardian  
37 on behalf of a minor ward, the court shall first find that the ward  
38 is likely to remain in the guardian's care until the age of majority  
39 and that the ward is not likely to be returned to the custody of his  
40 or her parents. Upon making those findings, the court shall consider



1 the petition and may grant the petition only if it finds that the  
2 proposed name change is in the best interest of the child.

3 SEC. 3. Section 103426 is added to the Health and Safety Code,  
4 to read:

5 103426. The State Registrar shall issue a new birth certificate  
6 without a court order for any person born in this state who has  
7 undergone clinically appropriate treatment for the purpose of  
8 gender transition and submits directly to the State Registrar the  
9 documentation described in subdivision (a) of Section 103430.

10 Upon receipt of the documentation and the fee prescribed by  
11 Section 103725, the State Registrar shall establish a new birth  
12 certificate reflecting the person's correct sex and name, if  
13 applicable, pursuant to subdivision (d) of Section 103430 and  
14 Sections 103440 and 103445.

O